

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:

CANUTE C SMITH,

Debtor.

=====X

tmd3574/db
October 21, 2019
09:00 AM

Case No. 119-42192-ESS

Hon. ELIZABETH S. STONG

NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the within application, Marianne DeRosa, Chapter 13 Trustee will move this court before the Hon. Elizabeth S. Stong, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, at 271 Cadman Plaza East, Brooklyn, NY, Courtroom 3585 on October 21, 2019 at 09:00 AM or as soon thereafter as counsel can be heard, for an order pursuant to 11 U.S.C. 1307(c) dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Responsive papers shall be filed with the bankruptcy court and served upon the Chapter 13 Trustee, Marianne DeRosa, Esq., no later than seven (7) business days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: Jericho, New York
October 1, 2019

/s/ Marianne DeRosa
MARIANNE DeROSA, TRUSTEE
100 JERICO QUADRANGLE, STE 127
JERICO, NY 11753
(516) 622-1340

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IN RE:

Case No: 119-42192-ESS

CANUTE C SMITH,

Hon. ELIZABETH S. STONG

APPLICATION

Debtor.

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TO THE HONORABLE ELIZABETH S. STONG U.S. BANKRUPTCY JUDGE:

MARIANNE DEROSA, Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 13 on April 11, 2019, and, thereafter, MARIANNE DEROSA was duly appointed and qualified as Trustee.

2. The Debtor's proposed Chapter 13 Plan, (hereinafter "The Plan"), dated and filed with the Court on July 2, 2019 and reflected in the Court's docket as number 26 provides for a monthly Plan payment of \$200.00 per month for a period of 60 months. Additionally, The Plan provides for full repayment to all filed secured, priority and general unsecured proofs of claim.

3. The Trustee objects to the confirmation of the Plan because the Debtor's proposed Plan payment is insufficient to pay secured claims in full as required by 11 U.S.C. §1325(a)(5) and the Debtor's supporting budget, Schedules I and J, does not indicate an ability to increase the plan payments.

4. Furthermore, the Debtor has failed to:

- a. provide the Trustee with proof of post-petition mortgage payments seven business days before the first meeting of creditors as required by E.D.N.Y. LBR 2003-1(a)(vi);
- b. provide the Trustee with proof of post-petition mortgage payments seven days before the first date set for confirmation of the Chapter 13 Plan as required by E.D.N.Y. LBR 2003-1(b)(i);
- c. provide the Trustee with a copy of an affidavit by the Debtor stating the Debtor has paid all amounts that are required to be paid under a domestic support obligation or that the Debtor has no domestic support obligations as required by E.D.N.Y. LBR 2003-1(b)(ii)(A) and (B);
- d. provide the Trustee with a copy of affidavit from the Debtor stating whether the Debtor has filed all applicable federal, state and local tax returns under the Bankruptcy Code Section 1308 as required by E.D.N.Y. LBR 2003-1(b)(iii);
- e. file the original affidavits with the Court as required under subdivisions (b)(ii) and (iii) as required by E.D.N.Y. LBR 2003-1(c).

- f. provide the Trustee with copies of leases for all real property for which the debtor is lessor as required by E.D.N.Y. LBR 2003-1(a)(iv)
- g. comply with 11 U.S.C. §1325(a)(6) in that the Debtor has not submitted timely Chapter 13 plan payments to the Trustee, and is \$800.00 in arrears through and including October 2019.

5. The Plan cannot be confirmed and as a result a delay has occurred that is prejudicial to the rights of creditors. The case must be dismissed under 11 U.S.C. § 1307(c)(1) and (c)(5).

6. Each of the foregoing constitutes cause to dismiss this Chapter 13 case within meaning of 11 U.S.C. §1307(c).

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Dated: Jericho, New York
October 1, 2019

s/Marianne DeRosa
Marianne DeRosa
Chapter 13 Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X Case No: 119-42192-ESS

IN RE:

CANUTE C SMITH,

CERTIFICATE OF SERVICE
BY MAIL

Debtors.

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This is to certify that I, Dani M. Boyer have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

CANUTE C SMITH
114-22 170th STREET
JAMAICA, NY 11434

LORNA J. LAMOTTE, ESQ.
1120 AVE OF THE AMERICAS, STE 4064
NEW YORK, NY 10036

JP MORGAN CHASE BANK
C/O SHAPRIO, DICARO & BARAK, LLC
175 MILE CROSSING BLVD
ROCHESTER, NY 14624

This October 1, 2019

/s/Dani M. Boyer

Dani M. Boyer, Senior Paralegal
Office of the Standing Chapter 13 Trustee
Marianne DeRosa, Esq.
100 Jericho Quadrangle; Ste 127
Jericho, NY 11753
(516) 622-1340

CASE NO: 119-42192-ESS
Hon. ELIZABETH S. STONG

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:

CANUTE C SMITH,

Debtor.

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NOTICE OF MOTION AND APPLICATION TO DISMISS CASE

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MARIANNE DeROSA, TRUSTEE
100 JERICO QUADRANGLE, STE 127
JERICO, NY 11753
(516) 622-1340